

6. PERMITS AND REGULATORY REQUIREMENTS

Air Resources:

CAA of 1970 (CAA - 42 U.S.C. 7401 et seq.). Section 118 of the CAA (42 U.S.C. 7418) requires that each federal agency with jurisdiction over any property or facility that might discharge air pollutants comply with “all Federal, state, interstate, and local requirements” with regard to the control and abatement of air pollution. Standards established by EPA under the CAA are implemented through state implementation plans developed by each state with EPA approval. The CAA requires sources to meet standards and obtain permits to satisfy these standards. Air emissions are regulated by the EPA under 40 Code of Federal Regulation (CFR) Parts 50 through 99. Radionuclide emissions are regulated under the National Emission Standards for Hazardous Air Pollutants Program under 40 CFR Part 61.

Fugitive dust emissions are subject to Idaho Administrative Procedure Act (IDAPA) 16.01.01.650, “Idaho Rules for Control of Fugitive Dust.” In addition, controlled burns are subject to IDAPA 58.01.01.614, “Prescribed Burning.”

Water Resources:

Activities in areas where storm water could discharge to water subject to the Clean Water Act and that could pollute storm water must be conducted according to the National Pollutant Discharge Elimination System (40 CFR 122). Fire-related activities could pollute storm water when soil is disturbed to maintain firebreaks and when ~~pollutants are released~~chemicals are used to sterilize soil. Pollution prevention practices are outlined in permits for storm water discharges (EPA 1998 and EPA 2000): mulches to control erosion, check dams to control sediment, perennial vegetation to permanently stabilize soil, and spill prevention to minimize pollutant exposure.

The relationship between erosion and personnel activities related to fire also has the potential to influence compliance with the State of Idaho Injection Well Permits (IDAPA 37.03.03). Storm water discharges to deep injection wells are monitored and analytical data are submitted to the Idaho Department of Water Resources.

Due to sedimentation of waterways, actions may be necessary to maintain drainage and manage flood hazards after a fire to comply with the “Natural Phenomena Hazards Design and Evaluation Criteria for DOE Facilities,” DOE-STD-1020. The document addresses earthquake, wind, and flood hazards; however, wildfire is not addressed. Flood design and evaluation criteria consider the design of safety structures, systems, and components for regional flood hazards and local precipitation that effect site drainage.

A Idaho Stream Channel Alteration Permit (IDAPA 37.03.07) or Army Corp of Engineers Nationwide Permit (33 CFR 330) would be required for road upgrades across waterways and removal of sediment from some waterways, for example to prevent ice jams and reduce flood hazards after a fire causes sedimentation of waterways.

Grazing may be restricted after a fire by the BLM to ensure compliance with the State water quality standards according to 43 CFR 4180.1, “Fundamentals of Rangeland Health.” Water quality standards are established by the State of Idaho according to 40 CFR 131, “Water Quality Standards.” (Except, the EPA established the water temperature criteria for bull trout in 40 CFR 131.33, “Subpart D – Federally Promulgated Water Quality Standards, Idaho,” which affects the Little Lost River basin.) The Big Lost River, Birch Creek, and Little Lost River are protected from their sources to the playas.

Water use for water cannons, tankers, and irrigation systems must be according to the “Water Rights Agreement between the State of Idaho and the United States, for the DOE,” 1990, until the INEEL water rights are adjudicated.

A watershed management approach must be implemented when protecting and restoring watersheds according to the “Unified Federal Policy for a Watershed Approach to Federal Land and Resource Management” (65 FR 62565).

Wildlife/Habitat Resources:

Soil disturbing activities related to fire have the potential to increase noxious weeds and invasive plant species that must be managed according to the "Management of Undesirable Plants on Federal Lands" (7 USC 2814) and the Invasive Species Executive Order (EO 13112).

Under the ESA (16 U.S.C. 1531 et seq.), DOE is required to review as guidance the most current FWS list for T&E plant and animal species. If after reviewing the list, DOE determines that the proposed action would not impact any T&E species, DOE may determine or document that formal consultation with the FWS is not required for this action. A biological assessment may be recommended for the proposed or alternative actions.

Other Federal Regulations DOE may be required to consult before implementing the proposed action or any of the alternatives include the Fish and Wildlife Coordination Act (16 U.S.C. § 661 et seq.), Bald Eagle Protection Act (16 U.S.C. §§ 668.), Clean Water Act (33 U.S.C. 1251 et seq.), Emergency Wetlands Resources Act (16 U.S.C. §§ 3901-3932), Migratory Bird Conservation Act (16 U.S.C. § 715 to 715s), and North American Wetlands Conservation Act (16 U.S.C. § 4401 et seq.).

Cultural/Historical Resources:

In compliance with the NHPA and its implementing regulations (36 CFR 800), all cultural resource evaluations and recommendations are subject to review by the Idaho State Historic Preservation Office. DOE-ID’s “Working Agreement” with the Shoshone-Bannock Tribes also mandates consultation on cultural resource issues.

Various federal and state laws, regulations and DOE directives protect cultural resources on federal lands such as the INEEL. One of the most far-reaching laws is the NHPA of 1966 (NHPA - PL 89 665; 16 USC 470). Specifically, protection of prehistoric and historic sites is facilitated through implementation of the NHPA Section 106 review (36 CFR 800), which is a five-step process designed to ensure that cultural resources are considered during planning stages and before any ground disturbing activities by Federal projects. In addition, all cultural resource evaluations and recommendations are subject to review by the Idaho State Historic Preservation Office. DOE-ID’s “working Agreement” with the Shoshone-Bannock Tribes also mandates consultation on cultural resource issues before any ground disturbing activities by Federal projects. Examples of ground disturbing activities that require action under these laws and agreements include, but are not limited to, road blading, trenching, mowing vegetation or sterilization of any INEEL property, and prescribed burns.

Shoshone-Bannock Tribal Interest:

DOE-ID recognizes the Shoshone-Bannock 1868 Fort Bridger Peace Treaty as a supreme law of the land that has not been abrogated by time. Additionally, DOE-ID recognizes the tenant responsibility and agrees to conduct all activities by providing opportunities for consultation and collaboration to the Shoshone-Bannock Tribes (Tribes) as required by, and pursuant to all applicable Public Laws, Executive